



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 130919819-6040-02]**

**RIN 0648-BD68**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;  
Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management  
Measures; Amendment 28**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement management measures described in Amendment 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 28). Amendment 28 and this final rule revise the Gulf of Mexico (Gulf) red snapper commercial and recreational sector allocations of the stock annual catch limits (ACLs). As a result of the revised sector allocations, this final rule revises the red snapper commercial and recreational quotas (which are equivalent to the ACLs) and the recreational annual catch targets (ACTs). This final rule also sets the

Federal charter vessel/headboat and private angling component quotas and ACTs based on the revised recreational sector ACLs and ACTs. The purpose of this final rule and Amendment 28 is to reallocate the Gulf red snapper harvest consistent with the 2014 red snapper assessment update while ensuring the allowable catch and recovery benefits from the rebuilding red snapper stock are fairly and equitably allocated between the commercial and recreational sectors.

**DATES:** This final rule is effective [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

**ADDRESSES:** Electronic copies of Amendment 28, which includes an environmental impact statement (EIS), a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at [http://sero.nmfs.noaa.gov/sustainable\\_fisheries/gulf\\_fisheries/reef\\_fish/2013/am28/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2013/am28/index.html).

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, Southeast Regional Office, NMFS, telephone: 727-824-5305; email: [Peter.Hood@noaa.gov](mailto:Peter.Hood@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

NMFS and the Council manage the Gulf reef fish fishery

under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens) Act.

On December 24, 2015, NMFS published a notice of availability for Amendment 28 and requested public comment (80 FR 80310). On January 25, 2016, NMFS published a proposed rule for Amendment 28 and requested public comment (81 FR 4010). The proposed rule and Amendment 28 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 28 and this final rule is provided below.

The Gulf red snapper stock is currently overfished and is under a rebuilding plan projected to end in 2032. Consistent with the rebuilding plan, both the commercial and recreational quotas have been allowed to increase as the red snapper stock has recovered. The red snapper commercial and recreational ACLs are equal to the applicable quotas.

The Magnuson-Stevens Act requires that in allocating fishing privileges among fishermen, such allocation shall be fair and equitable to all such fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires

an excessive share of such privileges. For stocks like red snapper, which are subject to a rebuilding plan, the Act requires that harvest restrictions and recovery benefits be allocated fairly and equitably among the fishing sectors. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

The purpose of Amendment 28 is to reallocate red snapper harvest from the commercial sector to the recreational sector, consistent with the 2014 red snapper update assessment, to ensure that the allowable catch and recovery benefits from a rebuilding stock are fairly and equitably allocated between the sectors. The current commercial allocation is reduced from 51 percent to 48.5 percent of the stock ACL and the recreational allocation is increased from 49 percent to 51.5 percent of the stock ACL. This shift in allocation is based on the increase in the total allowable harvest attributable to the calibration of Marine Recreational Information Program (MRIP) catch estimates that were used in a 2014 update assessment. This final rule implements the shift in allocation by modifying the commercial and recreational quotas as well as recreational component quotas consistent with the revised red snapper allocation. This final

rule also revises the applicable ACTs. All weights described in this final rule are in round (whole) weight.

#### *Allocation*

Amendment 28 revises the Gulf red snapper allocation to 48.5 percent of the stock ACL to the commercial sector and 51.5 percent of the stock ACL to the recreational sector. This shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits by recognizing that future recreational harvest will be monitored based on an improved methodology that result in higher landings estimates. This allocation is also reasonably calculated to promote conservation because the resulting commercial and recreational quotas keep the harvest under the overfishing limit, new accountability measures that have been implemented for the recreational sector are constraining harvest to the recreational quota, and the shift in allocation is not expected to affect the speed of recovery to the Gulf-wide management rebuilding target.

#### *Quotas, ACLs, and ACTs*

Given the red snapper stock ACLs of 13.96 million lb (6.33 million kg) for the 2016 fishing year and 13.74 million lb (6.23 million kg) for the 2017 fishing year, this final rule revises the commercial quota to 6.768 million lb (3.070 million kg) and 6.664 million lb (3.023 million kg) for the 2016 and 2017

fishing years and the recreational quota to 7.192 million lb (3.262 million kg) and 7.076 million lb (3.210 million kg) for the 2016 and 2017 fishing years. Because this final rule to implement Amendment 28 and reallocate the red snapper stock ACL was due to occur after January 1, 2016, a framework action was developed by the Council and implemented by NMFS that held back the percentage of the 2016 commercial quota necessary to implement Amendment 28 in 2016 (80 FR 73999, November 27, 2015). The revised commercial quota for 2016 reflects the portion of the quota held back on January 1, 2016.

For the recreational sector, the ACT is set 20 percent less than the recreational quota and result in ACTs of 5.754 million lb (2.610 million kg) for 2016 and 5.661 million lb (2.568 million kg) for 2017. As described in Amendment 40 to the FMP, the recreational quota and ACT are further divided into Federal charter vessel/headboat and private angling component quotas and ACTs based on an allocation of 42.3 percent to the Federal charter vessel/headboat component and 57.7 percent to the private angling component (80 FR 22422, April 22, 2015). As a result, this final rule sets the 2016 and 2017 Federal charter vessel/headboat component quotas at 3.042 million lb (1.380 million kg) and 2.993 million lb (1.358 million kg), and the component ACTs at 2.434 million lb (1.104 million kg) and 2.395

million lb (1.086 million kg), respectively. The rule also sets the 2016 and 2017 private angling component quotas at 4.150 million lb (1.882 million kg) and 4.083 million lb (1.852 million kg), and the component ACTs at 3.320 million lb (1.506 million kg) and 3.266 million lb (1.481 million kg), respectively. The 2016 and 2017 season lengths for each component will be determined using the revised component ACTs.

### **Comments and Responses**

A total of 143 comments were received on Amendment 28 and the proposed rule, including comments from individuals, 1 non-governmental organization, and 5 fishing associations. NMFS received 26 comments in opposition to Amendment 28 or the proposed rule and 25 comments in support of Amendment 28 and the proposed rule. Comments in support of the action state that providing more red snapper to the recreational sector is needed, but many also state that more fish should have been allocated to the recreational sector than the allocation in Amendment 28. In addition to these comments, a minority report was submitted by 4 of the 5 members of the Council who voted against approval of Amendment 28.

The remaining comments either expressed a general frustration with red snapper management or suggested other methods to manage red snapper fishing. Comments in this category

suggested: giving management of red snapper to the Gulf states, rescinding the establishment of the Federal for-hire and private angling components, using tags to track the red snapper recreational harvest, and managing red snapper as a game fish (i.e., no commercial harvest). Although these measures could be developed in another action, Amendment 28 does not address these topics because they are outside the scope of this action. Specific comments related to the actions contained in the amendment and the rule as well as NMFS' respective responses, are summarized below.

*Comment 1:* Amendment 28 violates 407(d)(2) of the Magnuson-Stevens Act.

*Response:* NMFS disagrees. In the proposed rule, NMFS made a preliminary determination that Amendment 28 is consistent with section 407(d)(2) of the Magnuson-Stevens Act, concluding that to give effect to all of the provisions of the statute: (1) the Council complied with the mandates of section 407(d)(2) by establishing a recreational quota in 1997 that reflected the previously established allocation; and (2) that this provision does not prohibit future action to adjust the allocations as necessary to ensure consistency with the other general requirements of the Magnuson-Stevens Act, such as National Standard 2, National Standard 4, and section 303(a)(14).

The comment suggests that this preliminary determination is wrong because: (1) section 407(d) expressly refers to "any fishery management plan, plan amendment, or regulation submitted . . . after the date of the enactment of the Sustainable Fisheries Act"; (2) Congress did not remove the provision when the Magnuson-Stevens Act was reauthorized in 2007 and also added section 303A(h) as part of the new provisions addressing limited access privilege programs, which states that nothing in the Magnuson-Stevens Act or reauthorization shall be construed to require a reallocation; and (3) to the extent the more general provision of the Magnuson-Stevens Act are in conflict with section 407(d)(2), that specific provision must control. However, as NMFS previously described, Section 407(d)(2) must be read in context with the rest of section 407(d) as well as the Magnuson-Stevens Act as a whole. The commenter's interpretation of subdivision (d)(2) would prohibit any adjustments to an allocation that was established over 25 years ago even when better scientific data reflects a more complete understanding of historical recreational landings. This interpretation is not consistent with subdivision (d) as a whole, which expressly contemplates specific action to address the lack of a recreational quota but does not speak to future adjustments to that allocation. The specific language in section 407(d)(2) is

not in conflict with the other general provisions of the Magnuson-Stevens Act because all of the provisions can be read as a consistent whole, with effect given to every part of the statute. Further, there is nothing that indicates any intent to exclude the allocations of red snapper from these general requirements, and it is clear that Congress knew how to make such an exception. For example, the general referendum requirements in section 303A(c)(6)(D) address the referendum requirements in section 407(c), providing: "The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery." 16 U.S.C. 1853a(c)(6)(D)(iii).

*Comment 2:* Amendment 28 is not fair and equitable as required by National Standard 4 and Magnuson-Stevens Act Section 303(a)(14) because the reallocation unfairly penalizes the commercial sector, which has not exceeded the commercial quota since the implementation of the IFQ program and because Amendment 28 fails to address the economic impact of the harvest restrictions or recovery benefits on the participants in each of the commercial, recreational, and charter fishing sectors.

*Response:* National Standard 4 requires, in relevant part, that any allocation be fair and equitable, and reasonably

calculated to promote conservation. Section 303(a)(14) requires that any rebuilding plan that reduces harvest in a fishery allocate harvest restrictions and recovery benefits fairly and equitably among the commercial, private recreational, and charter fishing components. As described in the proposed rule, the allocation is fair and equitable because it addresses changes in the methodology in collecting recreational landings information that indicate recreational harvests have been underestimated and that the red snapper stock is more productive than previously thought. Allocating the quantifiable increase in the total allowable harvest attributable to the calibration to the recreational sector is a straightforward way to reconcile prior underestimates with the result of the revised survey methodology that recognizes more reliable higher recreational catch estimates. Thus, this shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits.

An economic analysis of all alternatives considered in Amendment 28, including those based on MRIP recalibration (Alternatives 8 and 9), has been included in the EIS integrated with Amendment 28. For each alternative in the amendment, losses to the commercial sector and potential gains to the recreational sector have been quantified to the extent possible. The MRIP

recalibration found that the red snapper stock productivity was previously underestimated, implying that the stock ACL in previous years could have been higher. It should be stressed, however, that the setting of red snapper commercial and recreational ACLs in previous years and accompanying economic analysis were based on the best information available at that time. Subsequently, information from the MRIP calibration, ultimately determined to be the best scientific information available, became available but could not have been previously anticipated. Similarly, neither could potential economic effects, including changes in economic activities, to either sector arising from such information. The recreational sector may have benefited from exceeding its quota but the extent of these benefits was constrained by the shortened fishing season. In the future, recreational overages would be limited due to the accountability measure changes for the sector implemented in 2015 (80 FR 14328, March 19, 2015). Since 2007, the commercial sector has benefited from the introduction of the IFQ system despite being effectively constrained to its quota. The MRIP recalibration has resulted in increasing the red snapper stock ACL, benefiting both the commercial and recreational sectors. Given the higher stock ACL, the proposed reallocation would increase the benefits to the recreational sector and would

limit, but not eliminate, the benefit increases to the commercial sector.

*Comment 3:* Amendment 28 does not promote conservation as required by National Standard 4 and violates 303(a)(1)(A) of the Magnuson-Stevens Act by failing to protect, restore, and promote the long-term health of the fishery because it will reduce the spawning potential ratio (SPR) for the eastern portion of red snapper stock.

*Response:* NMFS disagrees. Although under the new allocation the projections indicate that the SPR would decline in the eastern Gulf portion of the red snapper stock, the SPR is also projected to decline in the eastern Gulf under the status quo allocation. Further, the projected decline from the shift in allocation is expected to be similar to the status quo because the proposed change in the allocation ratio is small (2.5 percent), which is less than 0.5 million lb (0.23 million kg), and the recreational ACT requires NMFS to project season lengths based on a catch target that is almost 1.5 million lb (0.68 million kg) less than the recreational quota.

The Council currently manages the Gulf red snapper stock as one Gulf-wide stock with a Gulf-wide status determination criteria and a Gulf-wide rebuilding plan. The Council selected the allocation alternative in Amendment 28 instead of the

greater shift in allocation presented in another MRIP-based option (Alternative 9) in part to avoid higher declines in SPR for the eastern Gulf. Any decrease in the SPR in the eastern Gulf is expected to be offset by a larger increase of SPR in the western Gulf, which results in a Gulf-wide recovery of red snapper under the rebuilding plan. Further, the resulting commercial and recreational quotas keep the harvest under the overfishing limit, and new accountability measures that have been implemented for the recreational sector are constraining harvest to the recreational quota. Thus, the amendment does promote conservation.

The commenter also stated the SPR projections included in Amendment 28 are not based on rational assumptions related to selectivity and discard mortality. Specifically, the commenter asserted that the projections assumed that selectivity would remain unchanged until 2032, which is unrealistic, and there would be a 10 percent discard mortality rate, which is based on the use of a venting tool that is no longer required as of August 2013 (78 FR 46820, August 2, 2013). The commenter stated a 21 percent discard mortality rate should be applied to any stock projections and to support this comment included analyses conducted by a consulting firm. These analyses, which were only provided to the NMFS in February 2016, have not been presented

to the Council's Scientific and Statistical Committee (SSC) or the Council. Further, these analyses do not present any information that indicates that the selectivity will change or that the removal of the venting tool requirement will necessarily result in a substantially higher discard mortality rate. With respect to release mortality, the analyses recognize that the venting tool requirement was removed to allow fishermen the ability to choose methods or tools appropriate for their situation when releasing reef fish. The venting tool requirement was removed based on the advice from the Council's SSC, which concluded that although some information shows that venting tools are helpful to reducing barotrauma, the use of descent devices may be preferable to venting in some situations, there is evidence that some fishermen use improper methods to vent fish, and there are situations such as fishing in shallow waters when neither venting nor decent devices are needed. Further, NMFS, Sea Grant, and state marine resource agencies promote educational and outreach activities encouraging fishermen to use venting tools and decent devices. Circle hook and dehooking device regulations to minimize bycatch and bycatch mortality that were put in place with the venting tool requirement also remain in place. The foregoing explains the rational basis for

the Council's decision to rely on the projections provided by the Southeast Fisheries Science Center (SEFSC).

*Comment 4:* Amendment 28 violates 303(a)(1)(A) of the Magnuson-Stevens Act by creating instability in the commercial sector.

*Response:* NMFS disagrees that Amendment 28 will create instability in the commercial sector. In terms of season length, ex-vessel prices, no quota overages, enhanced safety at sea, and absence of other race to fish (derby) conditions, stability in the commercial sector, which operates under an IFQ program, would remain unaffected by the reallocation in this final rule. The commercial red snapper sector was stable when the commercial quota was as low as 3.315 million lb (1.504 million kg) in 2007 when the IFQ program was established, and would be expected to remain stable at the 2016 and 2017 quota levels that are more than twice the 2007 quota. Even with possible future commercial quota reductions, the type of stability described above would still occur.

Although the lessened allocation ratio for the commercial sector would reduce the availability of IFQ allocations, which in turn could put upward pressure on allocation prices, this condition is more likely to arise with larger changes to the allocation ratio than the minimal one selected in Amendment 28.

This could be challenging to buyers of IFQ allocations, such as small IFQ shareholders and more recent entrants, and, the lessened allocation ratio could disrupt the stable planning horizon of commercial fishermen as they may need to re-scale their operations due to lower than expected IFQ allocations, although the scale of these effects under Amendment 28 would be minimal. Further, this sort of instability may be expected to diminish over time as fishermen adjust to the new allocation ratio. Nevertheless, it is likely that the commercial sector's dissatisfaction with the allocation change would persist for some time.

*Comment 5:* Amendment 28 violates the Council's allocation policy because the reallocation is not connected to the achievement of optimum yield (OY), frustrates the FMP objective of rebuilding the stock because of declines in SPR in the eastern Gulf, does not promote a rational or easily managed use of the resource, will not increase efficiency or benefit the recreational sector, and will not provide for the sustained participation of fishing communities in the eastern Gulf.

*Response:* NMFS disagrees that the reallocation is not consistent with the Council's allocation policy. Although this final rule redistributes quota from the commercial sector, which has little management uncertainty, to the recreational sector,

which has greater management uncertainty, that is currently addressed by using a 20 percent buffer between the recreational ACL and ACT. The use of an ACT is not inconsistent with the requirement under National Standard 1 to achieve OY on a continuing basis. The ACT is the amount of annual catch that is intended to control actual catch at or below the ACL, 50 CFR 600.310(f)(2)(v), while OY is "a long-term average amount of desired yield from a stock." 50 CFR 600.310(e)(3)(ii). The National Standard Guidelines explain the use of the phrase "achieving, on a continuing basis, the optimum yield from each fishery" in National Standard 1 in that context. 50 CFR 600.310(e)(3)(i)(B). For the recreational sector, the ACT is intended to help achieve OY by ensuring that overfishing does not occur and the red snapper stock continues to rebuild, consistent with § 600.310(3)(3)(i)(B).

The reallocation in this final rule does not conflict with the FMP objective to rebuild the red snapper stock throughout the Gulf. As discussed above, Gulf red snapper is managed as one Gulf-wide stock. This stock has Gulf-wide status determination criteria and is managed to achieve a Gulf-wide rebuilding plan. Although the stock condition is not uniform over the entire management unit, the stock is not undergoing overfishing and is rebuilding as scheduled under the rebuilding plan.

Amendment 28 addresses the results of changes in the methodology in collecting recreational landings information that indicate that recreational harvests have been underestimated, allowed for increases in the acceptable biological catch (ABC), and the implementation of higher quotas for both the recreational and commercial sectors. The reallocation in this final rule will promote a rational, more easily managed resource by reconciling new information that shows past recreational landings were underestimated with the fact that future recreational harvest will be monitored based on an improved methodology that recognizes more reliable higher landings estimates.

With respect to efficiency, the Council's allocation policy states that allocation shall consider efficient utilization of fishery resources, but should not just redistribute gains and burdens without an increase in efficiency. Amendment 28 contains a lengthy consideration of the issue of efficiency in the utilization of the red snapper resource, including an economic study conducted by the SEFSC, reviewed by the Council's Socioeconomic SSC and presented to the Council in October 2012, which concludes that the current allocation is inefficient. In developing Amendment 28, the Council did consider efficiency in evaluating the effects of reallocation but could not

definitively conclude that it would increase or decrease efficiency in the utilization of the red snapper resource. Amendment 28 also notes that, in principle, benefits to the recreational sector would accrue from a quota increase as a result of the reallocation, because each additional fish made available for harvest by the sector has value to the sector. However, certain conditions, such as state red snapper regulations that are inconsistent with Federal regulations, would tend to limit the extent of such benefits for anglers in Federal waters.

Amendment 28 includes a description of several commercial and recreational fishing communities throughout the Gulf and an analysis of the social and economic effects on fishing communities in general. The nature of social and economic effects on these communities resulting from the decline in SPR in the eastern Gulf is discussed in more general terms as part of the effects analysis for each allocation alternative. Negative or positive social and economic effects on the commercial or recreational sector, as a whole, would imply similar directional effects on the sector's fishing communities and these effects would vary by area or by the degree of dependence on red snapper. The decline in SPR in the eastern Gulf is relatively small so as not to pose as a significant

threat to the sustained participation of fishing communities in the red snapper segment of the reef fish fishery. Moreover, NMFS notes that negative effects experienced by those fishing for red snapper would be mitigated by the presence of other species important to the fishing communities.

*Comment 6:* Amendment 28 violates National Standard 2 because the recalibration methods used in the stock assessment were not based on the best scientific information available and state landings information was not referenced in the amendment.

*Response:* NMFS disagrees. The 2014 update red snapper stock assessment and a revision to that assessment were reviewed by the Council's SSC, and in both cases, the SSC determined that the assessments, both using the MRIP recalibrated landings data, were based on the best scientific information available, consistent with National Standard 2. In addition, the SEFSC reviewed Amendment 28 and in a memorandum dated October 9, 2015, certified the amendment is based on best scientific information available.

The comment also states that Amendment 28 did not reference state landings information that suggests MRIP has overestimated the recreational harvest. NMFS assumes the commenter is referring to recent state surveys run by Louisiana and Alabama, which are still in varying stages of review by independent

consultants that must be completed before meaningful conclusions regarding the quality of their estimates relative to MRIP can be drawn. Until then, the state landings information is not considered to be the best scientific information available for use in management.

*Comment 7:* Amendment 28 violates the National Environmental Policy Act (NEPA). Amendment 28 does not meet the purpose and need of the amendment or explain why averages are used to calculate the percentage allocation. Amendment 28 also does not contain a reasonable range of alternatives because there are no alternatives allocating more fish to the commercial sector.

*Response:* NMFS disagrees that Amendment 28 violates NEPA. The reallocation selected by the Council addresses the purpose and need of Amendment 28, which is to reallocate the red snapper harvest consistent with the 2014 update assessment to ensure the allowable catch and recovery benefits are fairly and equitably allocated, and to base sector allocations on the best scientific information available while achieving OY and rebuilding the red snapper stock. As described Amendment 28, the change in allocation is based on the proportion of the increase in the ABC that results from the recalibration of MRIP catch estimates to the recreational sector, which is the best scientific information available as described in the response to Comment 6

on National Standard 2. Allocating this quantifiable increase in the ABC to the recreational sector is a straightforward way to reconcile new information that shows past recreational landings were underestimated. Future recreational harvest will be monitored based on an improved methodology that recognizes more reliable higher landings estimates. This shift in allocation is intended to help maintain a fair and equitable distribution of recovery benefits.

The rationale for using an average in the change of allocation over the years 2015 to 2017 is explained in Section 2.1 of Amendment 28. "For 2015 to 2017, the amounts of quota attributable to the MRIP recalibration were derived from projections provided by the SEFSC (Appendix H). Percentages of the red snapper quota allocated to each sector on an annual basis would fluctuate based on the quota and on the amounts attributed to the recalibration. However, for this action, the Council elected to base the commercial and recreational allocations on the average percentages of the red snapper quota that would be allocated to each sector between 2015 and 2017." Thus, the Council used averages to account for fluctuations in the projections.

Although the final version of Amendment 28 did not analyze alternatives that increase the commercial allocation, the

Council did consider these alternatives in earlier drafts of the amendment. As explained in the response to comments on the draft EIS (final EIS Appendix D) for Amendment 28, when Amendment 28 was first developed as an options paper it included alternatives that would have shifted allocation from the recreational sector to the commercial sector. These alternatives were subsequently removed by the Council after review of an economic analysis conducted by the SEFSC that concluded that the red snapper allocation between sectors was not efficient and a marginal shift in allocation to the recreational sector would likely increase net benefits to the nation. In addition, the Council was concerned about the loss of fishing opportunities by the recreational sector. As described in the Notice of Intent, "After considering the economic analyses conducted by NMFS, the loss of fishing opportunities by the recreational sector due to shorter fishing seasons, and public comments provided at Council meetings, the Council concluded that increasing the allocation of red snapper to the commercial sector would not meet the purpose and need of Amendment 28." (78 FR 66900, November 7, 2013).

Based on the best scientific information available, the Council determined that it was appropriate to modify the purpose and need statement of the amendment to focus on reallocating the

red snapper harvest consistent with the red snapper assessment update, to ensure the allowable catch and recovery benefits are fairly and equitably allocated between the commercial and recreational sectors. When the draft EIS was published for comment, it included this revised purpose and need statement and two new alternatives added by the Council to address the new information and the revised purpose and need. The draft EIS for Amendment 28 did not include alternatives that would increase the commercial sector's allocation because the new scientific information did not change any previous understanding of commercial landings. NMFS explained this in its response to comments on the draft EIS, and included in that discussion an analysis of the environmental consequences of increasing the commercial allocation, as noted in its Record of Decision.

*Comment 8:* Amendment 28 violates NEPA because there is insufficient analysis of effects; specifically, there was insufficient analysis of the projected decline in SPR for the eastern component of the stock, the impacts analysis "assum[es] a stable or increasing quota" when the quota will be decreasing through 2032, there are outdated passages that refer to gains in net economic benefits resulting from allocation, and the analysis does not address the provision in the Congressional Omnibus Appropriations Bill signed into law on December 18,

2015.

*Response:* Amendment 28 contains a sufficient effects analysis. Amendment 28 contains a thorough analysis of the effects of the alternatives considered in the final EIS. With respect to the projected decline in SPR for the eastern component of the stock, as previously discussed in NMFS's responses to Comments 2 and 3, the Council manages red snapper Gulf-wide to meet a Gulf-wide rebuilding target and time frame. Further, the effects of the declining stock status in the eastern Gulf were considered in evaluating the stock in both SEDAR 31 and the 2014 update assessment and were the basis of setting the 2015 to 2017 ABCs by the SSC. The results of the next assessment will be provided to the Council to determine if further regulatory changes are warranted.

The discussion of the social effects of Amendment 28 largely focused on impacts "assuming a stable or increasing quota." However, the discussion also acknowledged that "it is possible the quota may decrease in future years, for example, if recruitment declines," and describes how problems associated with the commercial sector's loss of access to red snapper from reallocation under Alternatives 2-7 in Amendment 28 would be compounded should the quota decline in response to a declining ABC.

The references to gains in net economic benefits resulting from allocation are retained in Amendment 28 because they remain relevant for the assessment of allocation alternatives. They present the type of economic analysis that needs to be conducted when assessing the economic implications of allocation measures. The analysis that estimated marginal valuation (*i.e.*, economic value of a fish) in the commercial and recreational sectors remains valid both in terms of approach and results. However, as explained in Amendment 28, the use of the equimarginal principle, which means comparing the marginal values of the commercial and recreational sectors to determine the level of allocation to each sector that result in the greatest net economic benefits, is no longer valid. This is because the recreational sector's open access system is not conducive to an efficient allocation within the sector, making it impossible to provide policy-relevant rankings of the reallocation alternatives in the amendment based on the expected net benefits to the nation.

The impact of the provision in the Congressional Omnibus Appropriations Bill signed into law on December 18, 2015, that affects the management of the Reef Fish FMP for fiscal year 2016 was not addressed in Amendment 28 because the bill became law after the Council submitted the amendment to NMFS for review.

Further, this legislation has no direct bearing on the allocation decision. Although this legislation may increase the uncertainty in the recreational season length projections, the recreational and component ACTs will help ensure that the recreational ACL is not exceeded and NMFS will consider this additional uncertainty when determining the appropriate closure date.

*Comment 9:* Amendment 28 suffers from procedural defects and Amendment 28 should not be approved.

*Response:* There are no procedural defects that would require disapproval of the FMP or final rule. The comment incorrectly identifies the date that the Council submitted the amendment to NMFS for preliminary review as the transmittal date referred to in Section 304(a) of the Magnuson-Stevens Act. The transmittal date was December 18, 2015, and the notice of availability for Amendment 28 published on December 24, 2015 (80 FR 80310). This is generally consistent with the requirement in Section 304(a) that a notice of availability be published on or before the 5th day after the day the Council transmits a plan amendment to the Secretary. With respect to changes made to the document after the Council took final action, at its August 2015 meeting, the Council expressly authorized staff to make any required editorial changes to the amendment. Any changes

subsequently made to Amendment 28 were consistent with this authority.

The comment also states that it was improper for the Council to take final action on Amendment 28 prior to the release of the final 2014 update stock assessment report. Although the written report of the update assessment was not available until September 2015, which is after the Council took final action on Amendment 28 in August 2015, that report merely formalizes the information that was previously presented to the Council, the SSC, and the public. That draft assessment report was also used by the Council to increase the red snapper sector quotas in the spring of 2015. The public had an opportunity to comment on the assessment results both during the Council webinar and during the comment period on the proposed rule to implement the quota increase that was published in April 2015 (80 FR 17380, April 1, 2015). The amount of increase in the total allowable harvest attributable to the MRIP recalibration was derived from projections provided by the SEFSC in March 2015 and that analysis is included in Appendix H to Amendment 28.

The comment states that the Fishery Impact Statement (FIS) for Amendment 28 is incomplete because it does not contain a discussion of the action's impact on SPR and stock abundance in the eastern Gulf. However, the FIS incorporates, by reference,

the more detailed discussion of the expected effects provided in Chapter 4 of Amendment 28, and Section 4.1.2 of that Chapter addresses this issue.

*Comment 10:* Amendment 28 is not intended to, nor does it fix any purported errors in landings history over the base years used to establish the 51 percent commercial and 49 percent recreational initial allocation.

*Response:* Amendment 28 is not an attempt to fix the estimates used to establish the initial allocation and is not based on past red snapper harvest history. Amendment 28 and the reallocation in this final rule are based on new scientific information that indicates that recreational landings are greater than previously estimated. These revised historical recreational landings were then used in the 2014 update assessment and had a quantifiable impact on the results of that assessment. Allocating this quantifiable increase in the ABC to the recreational sector is a straightforward way to reconcile new information that shows that past recreational landings were underestimated.

*Comment 11:* The recreational sector should have received a greater increase in allocation than the preferred alternative selected by the Council.

*Response:* The Council evaluated several different alternatives that would increase the recreational sector's red snapper allocation during the development of Amendment 28. These alternatives included straightforward percentage changes, changes based on the red snapper stock ACL, and changes based on the new recreational catch information used in the 2014 update assessment. As explained in the responses to Comments 2 and 7, the Council determined, and NMFS agrees, that the allocation selected both meets the purpose and need of Amendment 28, and is fair and equitable because it addresses changes in the methodology in collecting recreational landings information that indicate recreational harvests have been underestimated.

#### **Classification**

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Gulf red snapper and is consistent with Amendment 28, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the RFA, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA incorporates the Initial Regulatory Flexibility

Analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

The preamble to the final rule provides the statement of the need for and objectives of this final rule. The Magnuson-Stevens Act provides the statutory basis for this final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified. Moreover, this final rule is not expected to change current reporting, record-keeping, and other compliance requirements on directly affected small entities.

No comments specific to the IRFA were received from the public or from Chief Counsel for the Advocacy of the Small Business Administration and, therefore, no public comments are addressed in this FRFA. Certain comments with socio-economic implications are addressed in the comments and responses section in the responses to comments 2, 4, 5, and 7. No changes to the proposed rule were made in response to such comments.

NMFS agrees that the Council's choice of preferred alternative will best achieve the Council's objectives for Amendment 28 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect federally permitted commercial reef fish fishermen that harvest red snapper in the Gulf. Changes to the recreational red snapper ACL/ACT due to the reallocation will not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses will be the result of changes in for-hire angler demand and will therefore be indirect in nature. Although anglers will be directly affected by this final rule, the RFA does not consider them as small entities. NMFS has not identified any other small entities that will be directly affected by this rule.

Commercial harvest of red snapper in the Gulf is currently managed under an IFQ program. From 2010 through 2014, an annual average of 375 vessels landed at least 1 lb (0.45 kg) of red snapper. Each vessel generated annual average dockside revenues of approximately \$102,000 (2014 dollars), of which \$36,000 were from red snapper, \$38,000 from other species jointly landed with red snapper, and \$28,000 from other species on trips without red snapper. Vessels that caught and landed red snapper may also operate in other fisheries, the revenues of which are not known and are not reflected in these totals.

The Small Business Administration has established size

criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million (North American Industry Classification System, NAICS code 114111, finfish fishing) for all its affiliated operations worldwide.

Based on revenue information, all 375 commercial vessels directly affected by this final rule may be assumed to be small entities. Thus, the final rule will affect a substantial number of small entities. Because all entities expected to be directly affected by the final rule are determined for the purpose of this analysis to be small business entities, the issue of disproportional effects on large and small entities does not arise in the present case.

The final rule will change the commercial and recreational sector allocation of the red snapper quota from 51 percent for the commercial sector and 49 percent for the recreational sector to 48.5 percent and 51.5 percent for the commercial and recreational sectors, respectively. The total ACL will be 13.960 million lb (6.33 million kg) for 2016 and 13.740 million lb (6.23 million kg) for 2017. Under the current allocation, the

commercial sector's ACL would be 7.120 million lb (3.22 million kg) for 2016 and 7.007 million lb (3.17 million kg) for 2017. Relative to these commercial ACLs, the reallocation will reduce the commercial sector allocation by 0.352 million lb (0.160 million kg) in 2016 and 0.343 million lb (0.156 million kg) in 2017, or a total of 0.695 million lb (0.315 million kg) over 2 years. Based on 2013 median ex-vessel price per pound for red snapper of \$4.83 when adjusted to 2014 prices (\$4.75 at 2013 dollars), these commercial quota reductions will be expected to reduce total gross revenue (ex-vessel revenue, minus the IFQ program's 3 percent cost recovery fee) of vessels that commercially harvest red snapper by approximately \$1.48 million (2014 dollars) in 2016 and \$1.45 million in 2017 for all vessels. Over 2 years, total revenue reductions will be \$2.93 million, or an average of \$1.46 million per year for all vessels. This average revenue reduction may be considered to approximate the annual revenue reduction of directly affected commercial vessels over a number of years for which the red snapper commercial quota is held at about the same levels as in 2016 and 2017. Based on the 2010-2014 average of 375 vessels that commercially harvested red snapper, the revenue reduction per vessel will be approximately \$3,893 annually. This amount is approximately 4 percent of total per vessel revenues from all

species.

The following discussion describes the eight alternatives that were not selected as preferred in Amendment 28 by the Council.

The first alternative, the no action alternative, would maintain the current commercial and recreational allocation of the red snapper ACL. This alternative would maintain relatively the same economic benefits to commercial vessels but at levels higher than those afforded by the preferred alternative. The second alternative would increase the recreational sector's allocation by 3 percent, resulting in a 48 percent commercial and 52 percent recreational sector allocation. The third alternative would increase the recreational sector's allocation by 5 percent, resulting in a 46 percent commercial and 54 percent recreational sector allocation. The fourth alternative would increase the recreational sector's allocation by 10 percent, resulting in a 41 percent commercial and 59 percent recreational sector allocation. The fifth alternative would allocate to the recreational sector 75 percent of the red snapper ACL increases beyond 9.12 million lb (4.14 million kg), resulting in a 42 percent commercial and 58 percent recreational sector allocation in 2016 and 42.3 percent commercial and 57.7 percent recreational sector allocation in 2017. The sixth

alternative would allocate to the recreational sector all red snapper ACL increases beyond a stock ACL of 9.12 million lb (4.14 million kg), resulting in a 33.3 percent commercial and 66.7 percent recreational sector allocation in 2016 and 33.9 percent commercial and 66.1 percent recreational sector allocation in 2017. The seventh alternative would allocate to the recreational sector 75 percent of any red snapper ACL increases beyond a stock ACL 10.0 million lb (4.54 million kg), resulting in a 43.6 percent commercial and 56.4 percent recreational sector allocation in 2016 and 43.9 percent commercial and 56.1 percent recreational sector allocation in 2017. The eighth alternative (Alternative 9 in Action 1) would allocate increases in the red snapper ACL due to the recalibration of MRIP catch estimates and to the change in size selectivity to the recreational sector, resulting in a 42.5 percent commercial and 57.5 percent recreational sector allocation in 2016 and 2017. All these other alternatives, except the no action alternative, would result in larger quota (ACL) and revenue reductions for the commercial vessels that harvest red snapper. The no action alternative was not selected because it would not meet the purpose and need of the amendment.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of

related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

**List of Subjects in 50 CFR Part 622**

Allocation, Commercial, Fisheries, Fishing, Gulf, Recreational, Red snapper.

Dated: April 21, 2016

---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i) to read as follows:

**§ 622.39 Quotas.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) *Commercial quota for red snapper.* (A) For fishing year 2015--7.293 million lb (3.308 million kg), round weight.

(B) For fishing year 2016--6.768 million lb (3.070 million kg), round weight.

(C) For fishing year 2017 and subsequent fishing years--6.664 million lb (3.023 million kg), round weight.

\* \* \* \* \*

(2) \* \* \*

(i) *Recreational quota for red snapper--*(A) *Total recreational quota (Federal charter vessel/headboat and private angling component quotas combined)*-(1) For fishing year 2015--7.007 million lb (3.178 million kg), round weight.

(2) For fishing year 2016--7.192 million lb (3.262 million kg), round weight.

(3) For fishing year 2017 and subsequent fishing years--7.076 million lb (3.210 million kg), round weight.

(B) *Federal charter vessel/headboat component quota.* The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015--2.964 million lb (1.344 million kg), round weight.

(2) For fishing year 2016--3.042 million lb (1.380 million kg), round weight.

(3) For fishing year 2017--2.993 million lb (1.358 million kg), round weight.

(C) *Private angling component quota.* The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015--4.043 million lb (1.834 million

kg), round weight.

(2) For fishing year 2016--4.150 million lb (1.882 million kg), round weight.

(3) For fishing year 2017--4.083 million lb (1.852 million kg), round weight.

\* \* \* \* \*

3. In § 622.41, revise (q)(2)(iii) to read as follows:

**§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

(q) \* \* \*

(2) \* \* \*

(iii) *Recreational ACT for red snapper*—(A) *Total recreational ACT (Federal charter vessel/headboat and private angling component ACTs combined)*—(1) For fishing year 2015--5.606 million lb (2.543 million kg), round weight.

(2) For fishing year 2016--5.754 million lb (2.610 million kg), round weight.

(3) For fishing year 2017 and subsequent fishing years--5.661 million lb (2.568 million kg), round weight.

(B) *Federal charter vessel/headboat component ACT*. The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat

permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015--2.371 million lb (1.075 million kg), round weight.

(2) For fishing year 2016--2.434 million lb (1.104 million kg), round weight.

(3) For fishing year 2017--2.395 million lb (1.086 million kg), round weight.

(C) *Private angling component ACT.* The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective for only the 2015, 2016, and 2017 fishing years. For the 2018 and subsequent fishing years, the applicable total recreational quota specified in § 622.39(a)(2)(i)(A) will apply to the recreational sector.

(1) For fishing year 2015--3.234 million lb (1.467 million kg), round weight.

(2) For fishing year 2016--3.320 million lb (1.506 million kg), round weight.

(3) For fishing year 2017--3.266 million lb (1.481 million kg), round weight.

[FR Doc. 2016-09892 Filed: 4/27/2016 8:45 am; Publication Date: 4/28/2016]